IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

CRL.A.No. 562 of 1999()

CRA.95/1995 of SESSIONS COURT, KOTTAYAM
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PETITIONER/ APPELLANT:

M.J.SEBASTIAN,
MYLADOOR HOUSE,
TEEKOY KARA, TEEKOY VILLAGE.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS: RESPONDENTS
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1. JOSEPH, S/O. JOSEPH,
MUKALAYIL HOUSE,
MANGALAGIRI BHAGOM,
REEKOY KARA, TEEKOY VILLAGE.

2. STATE OF KERALA, REP.BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

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CRL.A.NO. 562 OF 1999

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DATED THIS THE 26TH OCTOBER 2007

JUDGMENT

The appellant is the complainant in C.C.No.396/1993 in the file of the Judicial Magistrate of First Class, Erattupeptta with respect to the offence under Section 138 of the Negotiable Instrument Act. The accused stands acquitted. It is the case of the complainant that the accused borrowed a sum of Rs.1,25,000/- and issued the impugned cheque dated 15-8-1993. The same when presented for encashment was dishonoured for want of funds in the account of the accused. Lawyer notice sent was unclaimed. The matter is coming before this Court in the second round as in the first time the accused was convicted and the appellate court dismissed the appeal and this Court in revision remanded the matter to the Sessions Court and also directed the parties to adduce fresh evidence, if they so desire. Before the trial court, the evidence adduced consisted of

the testimony of Pws.1 and 2 and Exts.P1 to p7. After remand, PW1 was recalled and examined and the accused was examined as DW1 and Exts.D1 to D3 were marked. The defence version is that in 1991 he had borrowed a sum of Rs.1,00,000/- from the complainant and towards security executed agreement for sale with respect to 4.67 acres of land owned by him and also handed over signed blank cheque leaves. According to him, the above properties would have fetched a sum of R.8 lakhs and as he could not repay the amount within six months, the accused claimed 72% interest. According to him, in 1993 January he paid Rs.1,70,000/-. It was also brought out that there was a suit instituted by the father of the complainant as O.S.No.103/94 before the Sub Court, Kottayam for recovery of Rs.one lakh and interest based on the agreement for sale. He has produced Ext.D1 copy of the complaint as well as copy of the written statement. Subsequently, the suit happened to be dismissed as the balance court fee was not paid. According to the complainant, the suit was caused to be rejected as the accused was convicted in the trial court. There is also a case for the

complainant that the accused paid Rs.1,25,000/- for settling the civil and criminal cases. The above version was disbelieved as nobody would have paid Rs.1,25,000/- without settling the criminal case. It is also unlikely that a person who had borrowed Rs.1,00,000/- in 1991 and not repaid the amount, would have again been given Rs.1,25,000/- in August 1993 as mentioned by the complainant.

In the circumstances, the concurrent findings of the courts below are not liable to be disturbed. The appeal is dismissed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. NO. 562 OF 1999

JUDGMENT

26-10-2007